

COPY



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

2005 NOV 22 AM 11:14

FILED
EPA REGION VIII
HEARING CLERK

Ref: 8ENF-W-NP

CERTIFIED MAIL 7004 2510 0004 8289 8585

RETURN RECEIPT REQUESTED

NOV 22 2005

CT Corporation System, Registered Agent
P.O. Box 116640 W. Lawrence, Suite A
Helena, MT 59624-1166

Re: Order for Compliance under section
309(a) of the Clean Water Act

Dear Registered Agent:

Enclosed is a United States Environmental Protection Agency Region 8 (EPA) Order for Compliance ("Order") issued to the Montana Refining Company, Navajo Northern Inc., and Black Eagle Inc., (collectively "Montana Refining Company") for alleged violations of the federal pretreatment requirements. The Order specifies the nature of the violations under the Clean Water Act ("Act"), as amended, 33 U.S.C. § 1251, et seq. The authority for issuing this Order is provided to EPA under sections 308 and 309(a)(3) of the Act, 33 U.S.C. §§ 1318 and 1319(a)(3).

The Order describes the actions necessary in order for Montana Refining Company to achieve compliance with the Act. Furthermore, the Order requires Montana Refining Company to notify EPA in writing within ten (10) days whether it intends to comply with the Order.

The Act requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the statute and any orders issued there under. Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or civil or criminal action in U.S. District Court under sections 309(g), (b), (d) and (c) of the Act for the violations cited in the Order.

Please review this letter and the enclosed Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order. If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to Montana Refining Company's compliance with the CWA, the most knowledgeable people on my staff regarding these matters for legal and technical issues, respectively, are Peggy Livingston, Enforcement Attorney, at (303) 312-6858, and Colleen Gillespie, NPDES Enforcement Unit, at (303) 312-6047.

Sincerely,

A handwritten signature in black ink, appearing to read "Carol Rushin", with a stylized flourish at the end.

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: John Arrigo, MDEQ
Kari Smith, MDEQ

2005 NOV 22 AM 7:32

ORDER FOR COMPLIANCE VII
HEARING CLERK

Proceeding Issued Pursuant to
Sections 309(a) and 308(a) of
the Clean Water Act

Docket No. CWA-08-2006-0003

This Order for Compliance (Order) is issued pursuant to section 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of sections 301, 302, 306, 307, 308, 318, or 402 of the Act, or in violation of any permit condition or limitation implementing any such sections of the Act. This Order is also issued pursuant to section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to require reports necessary to determine compliance. These authorities have been delegated to the undersigned official.

FINDINGS OF FACT

1. Respondent Montana Refining Company (Respondent Montana Refining) is a general partnership whose partners are Respondent Navajo Northern, Inc., and Respondent Black Eagle, Inc.
2. Respondent Navajo Northern, Inc. (Respondent Navajo Northern) is a Nevada corporation authorized to do business in Montana.
3. Respondent Black Eagle, Inc. (Respondent Black Eagle) is a Delaware corporation authorized to do business in Montana.
4. Each Respondent is a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).
5. The Respondents own and/or operate a petroleum refinery facility (the facility) located at 1900 10th Street N.E., Great Falls, Montana, for the purpose of fuel production (Standard Industrial Classification 2911).

6. Since at least February 24, 2000, Respondents have discharged process wastewater within the meaning of 40 C.F.R. §401.11(q) to a wastewater treatment facility owned and operated by the City of Great Falls. The process wastewater contains benzene, among other substances, and is a pollutant within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
7. The wastewater treatment facility owned and/or operated by the City of Great Falls is a Publicly-Owned Treatment Works (POTW) as defined in 40 C.F.R. § 403.3(o).
8. The POTW includes not only the treatment plant itself, but also sewers, pipes, and other conveyances that convey wastewater to the treatment plant, according to 40 C.F.R. § 403.3(o).
9. The pollutants that the Respondents have introduced into the POTW constitute an "Indirect Discharge" as defined by 40 C.F.R. § 403.3(g).
10. As non-domestic sources of pollutants discharged to a POTW, the Respondents are subject to EPA's General Pretreatment Regulations for Existing and New Sources of Pollution, 403 C.F.R. part 403 ("Pretreatment Regulations"). EPA promulgated the Pretreatment Regulations to implement section 307(b) of the Act, 33 U.S.C. § 1317(b).

11. Each Respondent is an "Industrial User" within the meaning of 40 C.F.R. § 403.3(h), and a "Significant Industrial User" as defined at 40 C.F.R. § 403.3(t).
12. On July 8, 2005, Respondents removed from service an aeration pond in the facility's wastewater pretreatment system.
13. 40 C.F.R. § 403.5(b)(7) prohibits the discharge of any pollutant which will result in the presence of toxic gases in the POTW in a quantity which may cause acute worker health and safety problems.
14. The National Institute for Occupational Safety and Health's (NIOSH's) recommended exposure level ceiling for hydrogen sulfide is 10 parts per million (ppm). NIOSH has established the immediate danger to life or health (IDLH) concentration as 100 ppm for hydrogen sulfide.
15. The symptoms of short-term exposure to hydrogen sulfide gas include respiratory irritation, difficulty breathing, headaches, and nausea.

16. Since at least September 28, 2005, or earlier, hydrogen sulfide (H_2S) has been detected in the sewer line through which Respondents discharge process wastewater to the POTW's treatment plant. On September 28, 2005, the concentration of hydrogen sulfide in the sewer line exceeded 100 ppm at 31 of the 33 locations tested. The highest levels of hydrogen sulfide were found in manholes immediately downgradient of Respondents' discharge. Further testing on subsequent days (October 6, 13, 19, and 20, 2005) continued to find elevated levels of hydrogen sulfide in the sewer line. The hydrogen sulfide data are included in Appendix A.

17. The hydrogen sulfide in the sewer system has resulted in human health impacts. At least one City employee has reported headaches lasting as much as 18 hours after sampling for hydrogen sulfide along this sewer line.

18. Respondents' discharge has resulted in levels of hydrogen sulfide in the sewer line, a part of the POTW that may cause acute worker health and safety problems.

VIOLATION

19. Respondents' discharge has resulted in levels of hydrogen sulfide in the POTW which have the potential to cause acute worker health and safety problems on at least September 28, 2005, and October 6, 13, 19, and 20, 2005.

20. Each day that the Respondents' discharge resulted in hydrogen sulfide at levels that may cause acute worker health and safety problems constitutes a separate violation of 40 C.F.R. § 403.5(b)(7).

ORDER

Based upon the foregoing Violation, and pursuant to the authority delegated to the individual below, it is hereby ORDERED THAT:

21. Within ten (10) days of receipt of this Order, Respondents shall give written notice to EPA of their intent to comply with the requirements of this Order.
22. Upon receipt of this Order, Respondents shall immediately cease any discharge causing an acute danger to human health and worker health and safety, and immediately take all actions necessary to meet the requirements of the Act.
23. Beginning immediately, Respondents shall monitor their discharge daily for sulfides, flow, and pH. Analysis for sulfides shall be expedited. Results from each day of monitoring shall be submitted to the City of Great Falls upon receipt of the sulfide analysis. Results for the daily samples from the previous Monday through Sunday shall be provided to EPA each Friday via fax. Sampling will continue until written notification is provided by EPA that the sampling frequency is to be changed or can be discontinued.

24. Beginning immediately, Respondents shall begin weekly monitoring of their effluent for phenolic compounds, biochemical oxygen demand (BOD₅), chemical oxygen demand, total suspended solids, total chromium, hexavalent chromium, oil and grease, and ammonia as nitrogen. Sampling will continue until written notification is provided by EPA that the sampling frequency may be changed or that sampling can be discontinued. Data from the weekly monitoring shall be reported via fax to the City of Great Falls and EPA monthly, by the 15th day of the subsequent month.
25. All samples required by this Order shall be representative of the discharge. Sampling and analysis shall be done in accordance with 40 C.F.R. part 136.
26. If at any time the discharge from Respondents' facility causes the concentration of hydrogen sulfide gas in the sewer system to exceed the NIOSH recommended exposure level ceiling of 10 ppm, Respondents will cease discharge to the City of Great Falls POTW until such a time as the discharge is compliant with the Pretreatment Regulations.
27. Within fourteen (14) days of receipt of this Order, Respondents will provide to EPA and the City of Great Falls a report describing the cause of the hydrogen sulfide in the sewer system. The report will include all supporting documentation.

28. Within thirty (30) days of receipt of this Order, Respondents will provide to EPA and the City of Great Falls a plan describing the actions proposed and/or taken to prevent further violations of 40 C.F.R. part 403. At a minimum, this plan shall include a description of what actions Respondents will take, short-term and long-term if different, to ensure that the discharge of hydrogen sulfide remains below 10 ppm. A proposed time line for implementing these actions will be included in the report.

29. EPA will review the submission described in paragraph 28 and may: (a) approve the submission; (b) approve the submission with modifications; or (c) disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's comments.

30. Upon receipt of a notice of disapproval or a request for a modification as described in paragraph 29 above, Respondents shall, within fifteen (15) days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan(s). Respondents shall have the opportunity to object in writing to the notification of disapproval or request for modification given pursuant to paragraph 29 within fifteen (15) days of receipt of such notification. EPA and Respondents shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondents, which decision shall be final and binding upon Respondents.

31. Upon EPA approval, or approval with modification of the plan, the plan and its implementation schedule will be incorporated into this Order.
32. Within thirty (30) days of receipt of this Order, Respondents shall provide to EPA all information regarding the decision to bypass the facility's aeration pond in the summer of 2005, including but not limited to all notes on meetings and telephone conversations, emails, memos, and letters. This information should include all discussion about what effect taking the aeration pond offline would have on the characteristics of the effluent sent to the sewer.
33. Within fourteen (14) days of completion of the plan identified above, Respondents will submit to EPA an itemized list of all costs incurred or to be incurred to implement the plans.
34. In the case of non-compliance with any schedule in the plan listed in paragraph 31 of this Order, Respondents shall submit to EPA a written notice of non-compliance within fourteen (14) days. The notice shall include the cause for non-compliance and specify remedial actions being taken to comply.
35. All notices and reports required by this Order to be given to EPA shall be given to:

Colleen Gillespie (8ENF-W-NP)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466
gillespie.colleen@epa.gov
Fax: 303-312-6409

Phone: 303-312-6047

36. All notices and reports required by this Order to be given to the City of Great Falls shall be provided as required by Respondents' Industrial User permit or as follows:

Mike Jacobsen
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
mjacobson@ci.great-falls.mt.us
fax: 406-727-1327
phone: 406-727-1325

37. All reports and information required by this Order shall include the following certification statement, signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(1) of a responsible corporate officer for each of the corporate Respondents.

I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

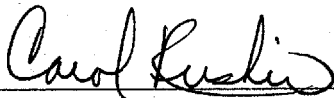
38. Any failure to comply with the requirements of this Order shall constitute a violation of said Order and may subject Respondents to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.

39. This Order does not constitute a waiver or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief as it may deem appropriate under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes the imposition of civil penalties of up to \$32,500 per day for each violation of the Act, while section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.
40. Nothing in this Order shall be construed to preclude the institution of further action under section 309 of the Act for those violations cited herein or relieve Respondents from responsibilities, liabilities, or penalties established pursuant to any applicable Federal and/or State law or regulation.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION VIII
Complainant.

Date:

11/18/2005



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

CERTIFICATE OF SERVICE

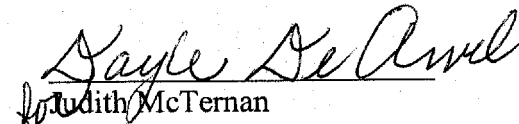
The undersigned hereby certifies that the original and one copy of the ORDER FOR COMPLIANCE was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, and that two true copies of the same were sent as follows:

Via certified mail to:

CT Corporation System, Registered Agent
P.O. Box 1166
40 W. Lawrence, Suite A
Helena, MT 59624-1166
(Registered agent for Black Eagle, Inc. and Navajo Northern, Inc.)

NOV 22 2005

Date


for Judith McTernan

Appendix A

| manhole | hydrogen sulfide in ppm | | | | | | |
|---------------------|-------------------------|-----------|------------|------------|------------|------------|-----------|
| | 09/28/05 | 10/6/2005 | 10/13/2005 | 10/19/2005 | 10/20/2005 | 10/26/2005 | 11/2/2005 |
| 4049 | 100.0 | 6 | 6 | 248 | 248 | 0 | 15 |
| 4041 | 270.0 | 3 | 1 | 200 | 200 | 0 | 21 |
| 4027 | 400.0 | 11 | 21 | 179 | 179 | 0 | 21 |
| 4071 | 200.0 | - | - | 229 | 229 | 1 | 25 |
| 4069 | 600.0 | 300 | 20.3 | 200 | 200 | 1 | 47 |
| 4068 | 500.0 | 225 | 50 | 200 | 200 | 1 | 77 |
| 4067 | 500.0 | 150 | 140 | 140 | 140 | 2 | 63 |
| 3412 | 26.0 | | | | | | |
| 4024 | 390.0 | | | | | | |
| 4025 | 380.0 | | | | | | |
| 4028 | 290.0 | | | | | | |
| 4029 | 250.0 | | | | | | |
| 4030 | 170.0 | | | | | | |
| 4031 | 150.0 | | | | | | |
| 4032 | 150.0 | | | | | | |
| 4033 | 180.0 | | | | | | |
| 4034 | 180.0 | | | | | | |
| 4035 | 120.0 | | | | | | |
| 4036 | 180.0 | | | | | | |
| 4037 | - | | | | | | |
| 4038 | 150.0 | | | | | | |
| 4039 | - | | | | | | |
| 4040 | 280.0 | | | | | | |
| 4042 | 250.0 | | | | | | |
| 4043 | 250.0 | | | | | | |
| 4044 | 260.0 | | | | | | |
| 4045 | 240.0 | | | | | | |
| 4046 | 240.0 | | | | | | |
| 4047 | 250.0 | | | | | | |
| 4048 | 200.0 | | | | | | |
| 4070 | 270.0 | | | | | | |
| 4072 | 170.0 | | | | | | |
| 4073 | 270.0 | | | | | | |
| 4074 | 280.0 | | | | | | |
| Ag Park Wet Well | 1.0 | | | | | | |